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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 311

CHARLES D. OFFHOUSE, ET ALS.,
Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF PATERSON IN THE COUNTY OF PASSAIC, A CORPORATION,
Appellee.

ON APPEAL FROM THE NEW JERSEY SUPREME COURT TO THE SUPREME COURT OF THE UNITED STATES.

STATEMENT OF JURISDICTION.

The appellants contend that the basis upon which the Supreme Court of the United States has jurisdiction to review the judgment of the New Jersey Supreme Court in this case is as follows:

I.

The statutory provisions sustaining the jurisdiction are found in the Act of February 13, 1925, Chapter 229, 43 Stat. 936 (Title 28, U. S. Code, Section 344(a)), providing that

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, • • • where is drawn in question the validity

> of a statute of any State, on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. * * *"

and in the Act of January 31, 1928, Chapter 14, 45 Stat. 54 (Title 28, U. S. Code, Section 861(a)), abolishing the writ of error and substituting appeal therefor; and in the Act of April 26, 1928, Chapter 440, 45 Stat. 466 (Title 28, U. S. Code, Section 861(b)), providing that the statutes governing writs of error shall be applicable to appeals.

II.

The law, the validity of which is involved in this cause, is a resolution adopted by the appellee, a municipal corporation of New Jersey, on October 14, 1937, which reads as follows:

> "Resolved, that all resolutions heretofore adopted and approved by the Board of Education, providing for a reduction in the basic salary of the officers and employees of the Board of Education be rescinded as of October 1, 1937, and be it further
>
> Resolved, that on and after October 1, 1937, all officers and employees be paid the base salary in accordance with the terms of their employment, providing the aforesaid officers and employees waive all claims, demands, damages or liabilities, which they have had or now have for or on account of any and all reductions made or affected prior to said October 1, 1937."[1]

III.

The date of the final judgment of the New Jersey Supreme Court sought to be reviewed herein is May 6, 1944.

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[1] This resolution has no official reference. It appears in the regular minutes of a meeting of the appellee. It is part of the Record below (Page 63).

This application for appeal is herewith presented on July 3, 1944.

IV.

The appellants are tenure teachers, principals, and supervisors employed by the appellee, which, under New Jersey law, is a municipal corporation. R. S. 18:6-21; *Merrey* v. *Board of Education,* 100 N. J. L. 273. In New Jersey, teachers who have been continuously employed for at least three years in a particular school district, acquire tenure, which protects them from dismissal without cause, and against reduction in salary. P. L. 1909, Ch. 243; R. S. 18:13-16, 18:13-17 (See post, Appendix A). The relationship between teacher and employer in New Jersey must be evidenced by written contracts in triplicate with individual teachers, or, in the absence of such written contracts, by rules and regulations adopted by the employing board of education, the rules and regulations being substitutes for written contracts. P. L. 1903, Second Special Session, Ch. 1 §106, R. S. 18:13-5, 18:13-7 (See post, Appendix B); *Weber* v. *Board of Education,* 127 N. J. L. 279, 286; *Redcay* v. *State Board of Education,* 130 N. J. L. 369, 371; affirmed, 131 N. J. L. 326.

On October 13, 1921, the appellee adopted rules and regulations, which it amended on July 14, 1927. The adoption of the rules and regulations was in pursuance of the statutory authority conferred by P. L. 1903, Second Special Session, Ch. 1, §106 (See post, Appendix B).

The rules and regulations so adopted and amended contained a schedule of salaries which separated the teaching staff into categories determined by the nature of the duties to be performed, the grade taught, and prior education and preparation. For each category, there was provided a stated minimum salary, and a stated maximum salary. The progression from minimum to maximum salary was accom-

plished in annual stages. The rules and regulations appear on pages 38 to 45 of the record below. In respect to teachers' salaries, the rules and regulations adopted October 13, 1921, and amended July 14, 1927, provided in part:

"GENERAL STATEMENT OF APPLICATION OF THE NEW SALARY SCHEDULE.

All teachers including principals and supervisors will be placed on the new salary schedule this year at the salary now paid for this school year and will be advanced on the new salary schedule next year and thereafter at the rate of increase as provided in the new salary schedule. In case the salary now paid is less than the minimum salary provided in the new salary schedule, the salary paid next year may remain less than this minimum but will be as much greater than the salary paid this year as the rates of increase provide in the new salary schedules for the particular positions."

• • • • • • •

"Teachers in Elementary Grades

License No. 1 or Temporary Certificate

1st year	$1200	3rd year	$1400
2nd "	1300		

License No. 1 granted upon appointment as teacher. Candidates must be graduates of a normal school of a standard two year course.

License No. 2 or Permanent Certificate

4th year	$1500	7th year	$1800
5th "	1600	8th "	1900
6th "	1700		

License No. 2 granted after three years satisfactory service as a teacher.

License No. 3 or Professional Certificate

9th year	$2100	12th year	$2700
10th "	2300	13th "	2800"
11th "	2500		

• • • • • • •

"High School Teachers (Men and Women)

1st year	$2000	7th year	$3200
2nd "	2200	8th "	3400
3rd "	2400	9th "	3600
4th "	2600	10th "	3800
5th "	2800	11th "	4000
6th "	3000	12th "	4200

Heads of departments in high school shall receive $400 in addition to the regular schedule of salaries for high school teachers."

There are similar provisions for other categories, such as supervisors, principals, manual training teachers, and teachers of other special classes.

From 1921 to 1932, the appellee paid its teacher employees in the manner and in the amounts provided by the rules and regulations. In 1932, it departed from the rules and regulations, and paid its teacher employees reduced salaries. From July 1, 1933, to July 1, 1937, there was in effect in New Jersey, a series of emergency statutes permitting local boards of education to reduce the salaries of teachers under tenure. The constitutionality of one of these statutes was upheld in *Phelps* v. *Board of Education*, 300 U. S. 319. The statutes in question are P. L. 1933, Ch. 12, Ch. 449; P. L. 1935, Ch. 6; P. L. 1936, Ch. 7, Ch. 27. On the expiration of these statutes on July 1, 1937, local boards were without power to continue to pay teachers at reduced rates. *Steck* v. *Camden Board of Education*, 123 N. J. L. 158; affirmed, 124 N. J. L. 132.

The appellants made demand upon the appellee, after July 1, 1937, for resumption of salaries in the amounts provided for in the rules and regulations. They made and make no demand for any salaries alleged to have accrued to them prior to July 1, 1937, the date upon which the emergency statutes above referred to, expired. The appellee refused to comply with the demand of the appellants, relying upon the resolution of October 14, 1937, supra, repealing the rules and regulations.

Section 18:3-14 of the Revised Statutes of New Jersey provides that the Commissioner of Education shall decide all controversies and disputes arising under the school laws of the state. Sections 18:2-4(d) and 18:3-15 of the Revised Statutes provide that the State Board of Education shall decide appeals from the decisions of the Commissioner of Education. These provisions have been construed as prohibiting recourse to the courts until the statutory tribunals have ruled on the controversy. *Ridgway* v. *Board of Education,* 88 N. J. L. 530; *Stockton* v. *Board of Education,* 72 N. J. L. 80; *Board of Education* v. *State Board of Education,* 115 N. J. L. 364.

The appellants, pursuant to R. S. 18:3-14, filed a petition with the Commissioner of Education alleging, among other things, that they were employed as teachers or principals by the appellee; that each had tenure as defined by P. L. 1909, Ch. 243, now sections 18:13-16 and 18:13-17 of the Revised Statutes (See post, Appendix A), that, pursuant to the provisions of P. L. 1903, Second Special Session, Chapter 1, § 106 (See post, Appendix B), the appellee had adopted rules and regulations governing the engagement and employment of teachers and principals, their salaries and the time and mode of payment thereof; that the appellee had failed and refused to pay the appellants the salaries in the manner and in the amounts provided for in the rules and regulations so adopted. They prayed that the appel-

lee be directed to pay them at the rates and in the manner provided by the rules and regulations. The specific grievance which they asked the Commissioner to rectify, was the act of the appellee in freezing the salaries of the appellants at the 1932 levels without paying them the increased annual compensation promised them by their contract. The Commissioner of Education held that the appellee had repealed the rules and regulations, and dismissed the appellants' petition.

The appellants appealed to the State Board of Education. Their grounds of appeal were based, in part, on their constitutional right to be protected against the repeal of the rules and regulations adopted by the appellee, asserting that the adoption of the rules and regulations by the appellee constituted a contract between the appellants and the appellee, and that the repeal, rescission, or revocation of the rules and regulations so adopted violated Article 1, Section 10 of the United States Constitution (R. 77 and 78).

The State Board of Education affirmed the decision of the Commissioner of Education, holding, consistently with its own prior rulings, that it had no power to pass upon the constitutional issue raised. Its opinion stated that it

> "will not decide constitutional questions, when any doubt exists, deferring in that respect to the superior courts of law" (R. 87).

In New Jersey, the decisions of administrative agencies such as the State Board of Education are reviewable, in the absence of a controlling statute, by the New Jersey Supreme Court, on a writ of certiorari, a prerogative writ which issues not as a matter of right, but as a matter of grace. *Board of Education, Flemington* v. *State Board of Education,* 81 N. J. L. 211; affirmed, 85 N. J. L. 384. The appellants applied to the New Jersey Supreme Court for a writ to review the decision of the State Board of Educa-

tion. One of the grounds upon which the application for the writ was based, was that the adoption of rules and regulations by the appellee created a contract with the appellants, and that the resolution repealing these rules and regulations violated the provisions of Article 1, Section 10 of the United States Constitution. The New Jersey Supreme Court dismissed the appellant's application for the writ. In a written opinion, a copy of which is hereto appended (See post, Appendix C), that court held that the repeal of the rules and regulations did not violate Article 1, Section 10 of the United States Constitution. The opinion of the New Jersey Supreme Court is reported in *Offhouse* v. *State Board of Education*, 131 N. J. L. 391. The federal question was raised in the first New Jersey tribunal which had jurisdiction to decide it. It was argued before the New Jersey Supreme Court, and was decided by that court adversely to the claim of the appellants. The ruling of the New Jersey Supreme Court on the federal question so raised, was necessary to the decision rendered in the cause, and was dispositive thereof.

The rule of the New Jersey Supreme Court dismissing the appellants' application for a writ to review the determination of the State Board of Education, is not appealable. *Post* v. *Anderson*, 111 N. J. L. 303; *Staubach* v. *Cities Service Oil Co.*, 130 N. J. L. 157.

V.

The decisions which sustain the jurisdiction of the Supreme Court of the United States to review this cause on appeal are:

(a) Cases which hold that a by-law or ordinance of a municipal corporation may be such an exercise of legislative power delegated by the legislature to the corporation as a political sub-division of the State, that it may properly

be considered as a law within the meaning of Article 1, Section 10 of the Constitution, are:

Atlantic Coast Line R. Co. v. *Goldsboro,* 232 U. S. 548;
Cuyahoga River Power Co. v. *Akron,* 240 U. S. 462;
King Manufacturing Co. v. *Augusta,* 277 U. S. 100.

(b) Where the State has authorized an agency to enter into a contract, and that agency does enter into an authorized contract, it is bound by its contract to the same extent and in the same manner as an individual is bound:

Hall v. *Wisconsin,* 103 U. S. 5.

(c) Cases which hold that, where the Supreme Court of the United States is asked to invalidate a state law upon the ground that it impairs the obligation of a contract, the existence of the contract, and the nature and extent of its obligation become federal questions for the purpose of determining whether they are within the scope and meaning of the Federal Constitution, and for such purpose finality cannot be accorded to the views of a state court, are:

Indiana Ex Rel Anderson v. *Brand,* 303 U. S. 95;
Irving Trust Co. v. *Day,* 314 U. S. 556.

VI.

The question involved in this case is substantial. The relationship between the appellants and the appellee is contractual. *Gowdy* v. *State Board of Education,* 84 N. J. L. 231; affirmed 85 N. J. L. 726; *Weber* v. *Board of Education, supra.* The *Gowdy* case held that the provisions of Chapter 1, P. L. 1903, Second Special Session (See post, Appendix B), permitting the amendment of rules and regulations, were curtailed and circumscribed by the enactment of P. L. 1909, Ch. 243 (post, Appendix A); that the two acts must be read together, and that any change in rules and regulations

detrimental to a teacher under tenure is an impairment of contract. This decision has stood since 1913. It was reaffirmed in 1941, by the New Jersey Supreme Court in *Board of Education, Trenton* v. *State Board of Education,* 125 N. J. L. 611, at page 614; and by the New Jersey Court of Errors and Appeals in 1941, in *Weber* v. *Board of Education, supra,* affirming *Board of Education, Trenton,* v. *State Board of Education, supra.*

The New Jersey Supreme Court in this case gave effect to a resolution of the appellee repealing the rules and regulations embodying the contract between the appellants and the appellee, against the claim of the appellants that such repealer impaired the obligation of their contract contrary to Article 1, Section 10 of the United States Constitution. Under these circumstances, a substantial federal question is presented. *New York Electric Lines Co.* v. *Empire City Subway Co.,* 235 U. S. 179; *Indiana Ex Rel Anderson* v. *Brand,* 303 U. S. 95.

Phelps v. *Board of Education, supra,* relied upon in the opinion of the New Jersey Supreme Court, is not determinative of the issue presented by this case. The *Phelps* case held only that the New Jersey tenure law (post, Appendix A), in and of itself, did not create a contract. It affirmed the power of the state legislature to enact a statute enabling local boards of education to cut tenure teachers' salaries, where the claim of contract by the teachers was based solely on the tenure law. In addition, the enabling law in issue in the *Phelps* case is no longer in force, having expired on July 1, 1937 (P. L. 1936, Chapter 27). There is now no comparable statute in New Jersey, the situation now being the same as if that law "never had existed". *Steck* v. *Board of Education,* 123 N. J. L. 158; affirmed, 124 N. J. L. 132.

The *Phelps* case did not involve or discuss the right of a local board of education to affect tenure teachers' salaries

in the absence of legislation authorizing it to do so. The statute (post, Appendix B) pursuant to which the appellee contracted with the appellants, was not in issue in the *Phelps* case. In the *Phelps* case, the absence of anything in the record to establish a contract for more than one year, was noted by this Court. In this case, the record discloses evidence of a contract which was in fact adhered to and performed according to its terms for twelve years, from 1921 to 1932.

It is respectfully submitted that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment of the New Jersey Supreme Court in this cause.

JEROME C. EISENBERG,
Attorney for Appellants.

APPENDIX "A".

Chapter 243, P. L. 1909, Section 1.

"The service of all teachers, principals, supervising principals of the public schools in any school district of this State, shall be during good behavior and efficiency, after the expiration of a period of employment of three consecutive years in that district, unless a shorter period is fixed by the employing board; provided, that the time any teacher, principal, supervising principal, has taught in the district in which he or she is employed at the time this act shall go into effect, shall be counted in determining such period of employment. No principal or teacher shall be dismissed or subjected to reduction of salary in said school district except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause, and after a written charge of the cause or causes shall have been preferred against him or her, signed by the person or persons making the same, and filed with the secretary or clerk of the Board of Education having charge of the school in which the service is being rendered, and after the charge shall have been examined into and found true in fact by said Board of Education, upon reasonable notice to the person charged, who may be represented by counsel at the hearing. Charges may be filed by any person, whether a member of said school board or not."

APPENDIX "B".

Section 106, Chapter 1, P. L. 1903, Second Special Session.

"A board of education may make rules and regulations governing the engagement and employment of teachers and principals, the terms and tenure of such employment, and the promotion and dismissal of such teachers and principals, the salaries, and the time and mode of payment thereof, and may from time to time change, amend or repeal such rules and regulations. The employment of any teacher by such board, and the rights and duties of such teacher with respect to such employment, shall be dependent upon and shall be

governed by the rules and regulations in force with reference thereto. If a Board of education shall not have made rules and regulations as aforesaid then no contract between such board of education and a teacher shall be valid unless the same be in writing, or partly written and partly printed, in triplicate, signed by the president and district clerk or secretary of the board of education and by the teacher. One copy thereof shall be filed with the board of education, one copy with the teacher and one copy with the county or city superintendent. Such contract shall specify the date when such teacher shall begin teaching, the kind and grade of certificate held by said teacher and the date when said certificate will expire, the salary, and such other matter as may be necessary to a full and complete understanding of the same. In every such contract, unless otherwise specified, a month shall be construed and taken to be twenty school days or four weeks of five school days each. The salary specified in every such contract shall be paid in equal monthly installments, not later than five days after the close of each month while the school shall be in session. Any contract or engagement between a board of education and a teacher shall cease and determine and be of no effect against said board whenever said board shall ascertain by notice in writing received from the county or city superintendent or otherwise, that said teacher is not in possession of a proper teacher's certificate in full force and effect, notwithstanding the term or engagement for which such contract shall have been made may not then have expired. The State Superintendent of Public Instruction shall prepare and distribute blanks for contracts between boards of education and teachers."

APPENDIX "C".

CHARLES D. OFFHOUSE, et al., *Petitioners*,

vs.

STATE BOARD OF EDUCATION and BOARD OF EDUCATION OF THE CITY OF PATERSON, *Defendants*.

The opinion of the court was delivered by

HEHER, *J.*:

Petitioners, 314 in number, are either teachers, principals or supervisors in the public school system of the City of Paterson who are under the tenure prescribed by R. S. 18:13-16 and 18:13-17. On March 5th, 1941, they filed a joint petition of appeal with the State Commissioner of Education alleging that the district board of education had refused to conform to a salary schedule prescribed by a rule of the board adopted on July 14th, 1927, in the exercise of the authority conferred by R. S. 18:13-5. The rule provided for the payment of fixed annual salary increments until the stated maximum salary had been reached. The Commissioner dismissed the petition. The State Board of Education affirmed the judgment. Mr. Justice Colie denied certiorari; and the application is renewed here.

The decisive question is whether this annually progressive salary schedule of 1927 remained in force at the time the jurisdiction of the State Commissioner was thus invoked. The schedule was observed until May 12th, 1932, when the local board, by resolution, ordered a 5% reduction of the salaries of all of its employees. And thereafter, during the school years 1933-34, 1934-35, 1935-36 and 1936-37, there were salary reductions ranging from 6% to 30%, pursuant to the statutes enacted to alleviate the financial stress consequent upon the trade depression. Pamph. L. 1933, ch. 12, p. 24, ch. 494, p. 1247; Pamph. L. 1935, ch. 6, p. 16; Pamph. L. 1936, ch. 7, p. 17, ch. 27, p. 42. The reductions continued until October 14th, 1937, when the local board resolved that "all resolutions heretofore

adopted and approved" by it, providing for "a reduction in the basic salary of the officers and employees of the Board * * * be rescinded as of October 1st, 1937;" and that "on and after October 1st, 1937, all officers and employees be paid the base salary in accordance with the terms of their employment, providing the aforesaid officers and employees waive all claims, demands, damages or liabilities, which they have had or now have for or on account of any and all reductions made or effected prior" thereto.

The Commissioner ruled that the "salary schedule became inoperative;" and the State Board concluded that other regulations limited "the right to increases in salary to those recommended by the superintendent [of schools] and the committee on education;" that "satisfactory service" is not sufficient in itself; that "the rules and regulations of a non-continuous body, such as a board of education, * * * do not bind successor boards unless they are expressly adopted or tacitly by acting thereunder;" and that the evidence conclusively demonstrates that "the several boards of education since July 1st, 1933, have not observed the rule relating to salary increases—in fact, by their disregard of such rule it may be said it was abrogated by 'negative action.'"

The contention made by petitioners is that the increments prescribed by the schedule of 1927 were conditioned solely on "satisfactory service," and hence they became a part of the individual teacher's salary so that non-payment of the increases accruing thereunder constituted a reduction in salary in contravention of section 18:13-17, supra. No claim is advanced for the reductions made during the years 1933 to 1937; but it is maintained that since July 1st, 1937, the petitioners have been, and hereafter will be, entitled to compensation on the basis of accrued increments under the regulation of 1927, in accordance with the number of their respective years of service, as if legislation authorizing salary reductions during the years 1933 to 1937 had not been passed. We take a different view.

It is conceded that, by the term "base salary" in the resolution of 1937, the local board had in contemplation the salaries paid in 1932, before the first reduction became

operative. It could hardly have any other meaning, for the "base salary" of the individual teacher at the time of the initial reduction included the increments which had then accrued. This understanding of the term was made manifest by the board's course of action following the adoption of that regulation. Thereafter, salaries were paid at the 1932 level until June, 1940, when teachers receiving an annual salary of $1,700, or less, were given what petitioners characterize as "an arbitrary increase of $100 each," while the salaries of all others continued at the 1932 rate. There have been no appropriations for increments since the passage of the resolution of 1932; and the superintendent of schools has since made no recommendations to the district board for salary increases in consonance with the schedule of 1927, although that had been the consistent practice theretofore. And there seems to have been no appeal by the petitioners from the action thus taken by the local board in 1937 until the instant proceeding was instituted.

The salary by-law of 1927 was repealed by implication. The reduction of salary effected by the resolution of 1932 was at the rate of 5% "of the salary received during the calendar year, 1932;" and the subsequent reductions were a fixed percentage of that salary, not of that salary enlarged by increments under the pre-existing schedule. The rule of 1937 provided merely for the payment of "the base salary in accordance with the terms" of the "employment," i. e., the salary fixed in 1932 conformably to the then existing schedule, and not such salary as increased by annual increments. The base salary of 1932 was determined, in part, by the number of years of service. There is no indubitable expression of a design to revive the salary schedule of 1927. In all seeming, these by-laws of 1932 and 1937 were each designed to occupy the whole field embraced by the earlier rule, and so as a substitute therefor. Compare *Burlington* v. *Estlow*, 43 N. J. L. 13. And, if there be doubt as to this, we are aided by the construction put upon the rules by the successive boards charged with the administration of the school system in this district.

Contemporary exposition may be considered, and is ordinarily accorded great weight, where the language of a

municipal regulation is of doubtful import and is not made plain by the context. The meaning attributed to the rule soon after its adoption by the authority charged with its enforcement is generally the best construction; and it will be accepted unless clearly wrong, especially where it has received the acquiescence of those affected by its terms. And a local or special act may be practically construed by the parties for whose purposes it was enacted, so as to induce an acceptance of their interpretation without reference to the length of the time covered by such practical construction. *Lewis' Sutherland Statutory Construction* (2d ed.), § 472.

Salary regulations by district boards of education are repealable. R. S. 18:13-5. Only accrued increments under a valid and subsisting regulation of the local board are beyond repeal. Unaccrued increments do not take the classification of "salary" within the intendment of section 18:13-17, supra. *Greenway* v. *Camden Board of Education,* 129 N. J. L. 46; affirmed, Id. 461. And, while in the view we take of the case there is no occasion to consider the point here, it is to be noted that this court has held that non-observance of a salary schedule "for many years" constituted abrogation. *Liva* v. *Board of Education,* 126 Id. 221. See, also *Weber* v. *Board of Education of Trenton,* 127 Id. 279. The last cited case is also invoked by petitioners. But there the opinion reveals "an express declaration of the local board not to abandon the salary schedule."

Lastly, it is urged that "the undertaking of the local board to pay salaries to the petitioners" under the regulation of 1927 "was contractual in nature, and the local board's alleged repeal or rescission of the schedule" therefore violates article 1, section 10, of the Constitution of the United States, prohibiting the states from passing any law impairing the obligation of contracts.

The line of argument is that the relationship between teachers and the district boards must be evidenced either (1) "by rules and regulations adopted pursuant to R. S. 18:13-5," or (2) "by written contracts of employment executed in accordance with the provisions of R. S. 18:13-7;" and that the "same rule that would be applied had the local

board contracted individually with the petitioners pursuant to R. S. 18:13-7, must be applied to this case, where the local board contracted collectively with the petitioners pursuant to R. S. 18:13-5." It is said, further, that where a local board has exercised the legislatively conferred "power to contract," it is "bound in the same manner that an individual is bound."

The point is plainly without substance. As to unaccrued increments, the provisions of the salary schedule are, by the very terms of the statute investing the district boards with authority to fix salaries, subject to repeal or alteration by the board itself. R. S. 18:13-5. Until the accrual, the modification or repeal of the rule providing for increments does not constitute a reduction of salary within the intendment of R. S. 18:13-17. A regulation providing for increments is a mere declaration of legislative policy that is at all times subject to abrogation by the local board in the public interest. *Greenway* v. *Board of Education*, supra. And it is now settled that sections 18:13-16 and 18:13-17 invest teachers and principals in the appointed category with a mere "legislative status," subject to legislative alteration and amendment, and does not give use to an irrepealable "legislative contract." Section 18-13-7, supra, is "but a regulation of the conduct of the board and not a term of a continuing contract of indefinite duration with an individual teacher." *Phelps* v. *Board of Education*, 115 N. J. L. 310; affirmed, 116 Id. 412; affirmed, 300 U. S. 319; 57 S. Ct. 483; 81 L. Ed. 674. Permanent tenure teachers are in the one category, however the employment relationship may have originated.

The petition is dismissed, with costs.